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DRAPER *v.* COMMONWEALTH.

Sept. 11, 1913.

[79 S. E. 322.]

1. Husband and Wife (§ 313*)—Nonsupport—Evidence.—In a prosecution of a husband for total nonsupport of his wife, evidence that accused had two small children by a former marriage dependent on him for support was inadmissible.

[Ed. Note.—For other cases, see Husband and Wife, Cent. Dig. § 1110; Dec. Dig. § 313.* 7 Va.-W. Va. Enc. Dig. 228.]

2. Husband and Wife (§ 305*)—Nonsupport—Defenses.—That a wife, after separation because of her husband's fault, took service and supported herself was no defense to a prosecution for nonsupport.

[Ed. Note.—For other cases, see Husband and Wife, Cent. Dig. § 1103; Dec. Dig. § 305.* 7 Va.-W. Va. Enc. Dig. 228.]

3. Husband and Wife (§ 305*)—Nonsupport—Prosecution—Motive of Complainant.—A prosecution of a husband for nonsupport of his wife being by the commonwealth, the wife's motive in testifying against him is immaterial.

[Ed. Note.—For other cases, see Husband and Wife, Cent. Dig. § 1103; Dec. Dig. § 305.* 7 Va.-W. Va. Enc. Dig. 228.]

Error to Corporation Court of Roanoke.

James Draper was convicted of desertion and nonsupport, and he brings error. Affirmed.

Hairston & Willis, of Roanoke, for plaintiff in error.

The Attorney General and *Samuel W. Williams*, of Richmond, for the Commonwealth.

C. L. RITTER LUMBER CO., Inc. *v.* COAL MOUNTAIN MINING CO.

Sept. 11, 1913.

[79 S. E. 322.]

1. Appeal and Error (§ 503*)—Jurisdiction—Burden of Proof.—The burden of showing the existence of appellate jurisdiction is on the appellant, which jurisdiction must affirmatively appear from the record.

[Ed. Note.—For other cases, see Appeal and Error, Cent. Dig. §§ 2310, 2311; Dec. Dig. § 503.* 1 Va.-W. Va. Enc. Dig. 476; 14 Va.-W. Va. Enc. Dig. 71; 15 Va.-W. Va. Enc. Dig. 57.]

2. Appeal and Error (§ 150*)—Appellate Jurisdiction—Party Secondarily Liable—Statutes.—Where a grantee of the timber on certain land was decreed only secondarily liable in a suit to enforce a vendor's

*For other cases see same topic and section NUMBER in Dec Dig. & Am. Dig. Key No. Series & Rep'r Indexes.